United Nations CAT/C/MNE/CO/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the second periodic report of Montenegro*

1. The Committee against Torture considered the second periodic report of Montenegro (CAT/C/MNE/2) at its 1224th and 1227th meetings, held on 7 and 8 May 2014 (see CAT/C/SR.1224 and 1227), and adopted the following concluding observations at its 1239th meeting, held on 16 May 2014 (see CAT/C/SR.1239).

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its second periodic report thereunder without delay, as it improves the cooperation between the State party and the Committee and focuses on the examination of the report as well as the dialogue with the delegation. The Committee also welcomes the submission of the common core document (HRI/CORE/MNE/2012).

3. The Committee welcomes the constructive dialogue held with the State party's high-level and multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

4. The Committee welcomes the State party's ratification of the following international and regional instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009;

(b) Convention on the Rights of Persons with Disabilities, and its Optional Protocol, in 2009;

(c) International Convention for the Protection of All Persons from Enforced Disappearance, in 2011;

* Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

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(d) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2013;

(e) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2013.

5. The Committee welcomes the legislative measures taken by the State party in areas of relevance to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including the adoption of the:

(a) Law on Domestic Violence Protection, in 2010;

(b) Law on Amendments to the Law on Minority Rights and Freedoms, in 2010;

(c) Law on the Treatment of Juveniles in Criminal Proceedings, in 2011.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

6. While noting the efforts undertaken by the State party to bring its legislation in the area of torture prevention into compliance with the Convention and international standards, the Committee remains concerned that legislation is not yet fully harmonized with the Convention, in view of the limited scope of the definition of torture and lenient penalties for the crime of torture under article 167 of the Criminal Code, amended in 2010. The Criminal Code does not fully reflect all elements of the definition in article 1 of the Convention, which includes pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (arts. 1 and 4)

The State party should revise the legislation:

(a) To adopt a definition of torture that covers all the elements contained in article 1 of the Convention;

(b) To ensure that penalties for torture are commensurate with the gravity of this crime, as required under article 4, paragraph 2, of the Convention;

(c) To ensure that the absolute prohibition on torture is non-derogable and that acts amounting to torture are not subject to any statute of limitations.

Fundamental legal safeguards

7. The Committee is concerned that, in practice, persons deprived of their liberty are not always afforded all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to have access to an independent lawyer and an independent doctor of their choice, and to contact a relative. The Committee expresses its concern at the requirement for an order by the public prosecutor prior to medical examinations of arrested and detained persons being carried out, under article 268 of the Criminal Procedure Code. (art. 2)

In the light of the Committee's general comment No. 2 on the implementation of article 2 by States parties, the State party should take all necessary measures to ensure that all persons deprived of their liberty are afforded, in law and in practice, fundamental legal safeguards from the very outset of deprivation of liberty, including the right of access to an independent lawyer and to an independent doctor, preferably of their own choice, without conditioning such access on the permission or request of officials, and the right to contact a relative.

Legal aid

8. While welcoming the adoption in 2011 of the Law on Legal Aid, the Committee is concerned at reports that its implementation continues to be hampered and that marginalized groups, including asylum seekers and displaced persons, are often left without access to legal procedures and protection of their rights (arts. 3, 11 and 16), in view of:

(a) The lack of human and financial resources and of public awareness about the Law;

(b) The limited coverage of the Law, which only extends to judicial and not administrative proceedings.

The State party should continue to intensify its efforts to provide an effective free legal aid system and to ensure appropriate protection and access to the legal system for vulnerable persons and groups, in particular by providing adequate resources for effective implementation of the Law on Legal Aid and by extending the application of free legal assistance so that it includes administrative proceedings.

National institutions

9. While noting that the Protector of Human Rights and Freedoms of Montenegro was designated as the national preventive mechanism following the ratification by Montenegro of the Optional Protocol to the Convention against Torture, the Committee is concerned at the lack of information about the legal framework and the lack of resources and staff for it to effectively discharge its duties. The Committee is also concerned at the lack of full independence of this institution and at the inadequate human and financial resources allocated to it. (arts. 2 and 11)

The State party should take measures to further strengthen the institution of the Protector of Human Rights and Freedoms in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and to ensure the provision of sufficient financial and human resources to enable it to carry out its mandate independently and effectively, particularly in view of its expanded mandates and powers as the national preventive mechanism.

Independence of the judiciary

10. While noting the ongoing amendments to the Law on Courts and the Law on the Judicial Council, the Committee remains concerned at the lack of independence of the judiciary in practice, mainly due to the lack of objective and precise evaluation criteria for the appointment, promotion or dismissal of judges. (arts. 2 and 12)

The State party should continue to take measures to ensure the full independence and impartiality of the judiciary in performing its functions, and should review the regime for the appointment, promotion and dismissal of judges, in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146) and the Bangalore Principles of Judicial Conduct (2002).

Asylum seekers

11. While noting the opening in 2014 of the first centre in the State party for asylum seekers, the Committee regrets that the centre is not fully operational and that many asylum seekers are still accommodated in ad hoc reception centres that do not meet international standards. The Committee is also concerned at the lack of clarity of the Law on Asylum with regard to the competences of the various governmental entities involved in the asylum system, as well as at the poor conditions for asylum seekers. (art. 3)

The State party should provide the centre for asylum seekers with the necessary resources. The State party should also amend the Law on Asylum and revise the national asylum system in order to offer more effective protection against refoulement.

Displaced persons

12. While welcoming the State party's accession in 2013 to the Convention on the Reduction of Statelessness, as well as its adoption of the Law on Amendments to the Law on Foreigners, the Committee remains concerned at reports that the Montenegrin authorities continue to pursue repatriation, voluntary return, or resettlement in a third country as the main solutions for displaced persons, rather than integration in Montenegro. (art. 3). The Committee is particularly concerned at:

(a) The legal status of "displaced" persons and "internally displaced" persons, the persistent obstacles to their obtaining permanent resident status, and the fact that they may be subject to refoulement if they fail to regularize their legal status;

(b) The obstacles to birth registration, including high administrative fees and complex procedures, in particular for Roma, Ashkali and Egyptians, which put them at risk of statelessness.

In light of the recommendations made by the Committee (CAT/C/MNE/CO/1, para. 11), the State party should take measures to:

(a) Simplify the procedure for regularizing the legal status of "displaced" and "internally displaced" persons, and protect their legal rights. They should be protected from refoulement or mistreatment;

(b) Establish a simplified and accessible procedure for birth registration, thereby reducing the number of persons at risk of statelessness.

Impunity for war crimes and remedy for victims

13. The Committee is deeply concerned at the impunity enjoyed by perpetrators of crimes under international law, in view of the absence of final convictions in proceedings in domestic courts. Regarding the four war crimes cases, namely Kaluderski Laz, Morinj, Deportation of Muslims, and Bukovica, there is a concern that the court failed to fully apply domestic criminal law and to comply with relevant international legal standards. The Committee expresses its concern that the majority of victims of violations of war crimes in Montenegro have yet to be afforded the right to reparation. (arts. 12, 14 and 16)

The State party should intensify its efforts to fight impunity for war crimes by:

(a) Ensuring that relevant domestic criminal law is fully applied and that decisions by the domestic courts on war crimes cases are in line with international humanitarian law, including the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia;

(b) Completing its investigation of all allegations of wartime crimes, and prosecuting the perpetrators and punishing them with appropriate penalties commensurate with the grave nature of the crimes;

(c) Ensuring access to justice and reparations for victims, in the light of the Committee's general comment No. 3 on the implementation of article 14 by States parties.

Investigations

14. The Committee takes note of the work of the Division for Internal Control of the Police, under the Ministry of the Interior, as well as of article 11 of the Criminal Procedure Code which prohibits the threatening or the exerting of violence against a suspect or accused person in order to extract a confession. However, the Committee remains concerned at consistent reports about (a) physical ill-treatment of detainees and the exertion of pressure on them by the police at the time of questioning with a view to extracting confessions or obtaining information and (b) the State party's failure to investigate allegations of torture, ill-treatment or excessive use of force by the police and to prosecute and punish perpetrators. (art. 12)

The State party should:

(a) Improve criminal investigation methods so as to put an end to practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;

(b) Ensure prompt, impartial and effective investigation into all allegations of torture, ill-treatment and excessive use of force by the police, and prosecute and punish those responsible with appropriate penalties. Such investigations should not be conducted by the police or under the authority of the police but by an independent body;

(c) Ensure that persons under investigation acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation.

Individual complaints

15. The Committee is concerned at the lack of effective measures by the State party to ensure an effective complaints procedure for victims of torture or ill-treatment and to provide protection for victims and witnesses from ill-treatment or intimidation as a consequence of filing a complaint or providing evidence. (arts. 13 and 16)

The State party should establish and promote an effective mechanism for receiving complaints of torture and ill-treatment, including in custodial facilities. The State party should guarantee full protection for complainants and witnesses in cases of torture and ill-treatment.

Training

16. While noting the detailed information provided by the State party on training programmes for law enforcement officials, prison staff and judges, the Committee regrets the paucity of information on (a) specific training regarding the provisions of the Convention and (b) monitoring and evaluation of the effectiveness of the training programmes in reducing the incidence of torture and ill-treatment. (arts. 10 and 16)

The State party should continue to intensify its efforts to provide human rights training programmes for all officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, with a focus on the State party's obligations under the Convention. In particular, the State party should:

(a) Ensure that all relevant personnel, including medical personnel, receive specific training on how to identify signs of torture and ill-treatment. To this end, the Manual on Effective Investigation and Documentation of Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be included in the training material;

(b) Assess and evaluate, as far as practicable, the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.

Conditions of detention

17. While noting the State party's commitment to improving conditions of detention, through a European Union project, the Committee remains concerned at the conditions in detention facilities, especially the remand prison in Podgorica, such as the overcrowding, the inadequate access to health care and the lack of meaningful activities and rehabilitation programmes. The Committee regrets the lack of information on inter-prisoner violence and sexual violence in prisons. (arts. 11 and 16)

The State party should strengthen its efforts to improve prison conditions in conformity with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII)), by reducing the high rate of overcrowding, in particular through the wider use of alternatives to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), by providing access to full health care services for prisoners. The State party should implement effectively alternative sanctions and rehabilitation programmes. The Committee also recommends that the State party take appropriate measures to prevent sexual violence in prisons, including inter-prisoner violence.

Attacks against journalists

18. The Committee is concerned at a number of cases of intimidation of or violence against journalists, killings of journalists and attacks against media property, and at the lack of investigation of such cases. In addition to the cases of Olivera Lakić and Mladen Stojović, the Committee takes note of concerns raised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at the end of his visit to Montenegro in 2013 in relation to unresolved cases of attacks on and killings of journalists, including the murder of Duško Jovanović in 2004. (arts. 2 and 12)

The State party should inform the Committee of the outcomes of the work carried out by the commission established in December 2013 to investigate cases of threats and violations against journalists, murders of journalists and attacks on media property.

Violence against women

19. While noting the State party's efforts to combat gender-based violence, including the adoption of the Law on Domestic Violence Protection in 2010, and of the Strategy for Combating Domestic Violence for the period 2011–2015, the Committee expresses its concern at (art. 16):

(a) The reported lack of implementation of existing legislation and policy;

(b) The prevalence of violence against women and, in particular, of domestic violence, as well as the low rate of reporting on such violence;

(c) The lack of effective investigation of reports of violence and the lack of prosecutions, the mild sentences given to perpetrators and the inadequate protection of victims, with protection orders being used in only a limited manner.

Recalling the recommendations made in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/MNE/CO/1, para. 19), the State party

should increase its efforts to prevent, combat and punish violence against women and domestic violence, in particular by conducting impartial, prompt and effective investigations into reports of violence, punishing perpetrators with appropriate penalties, providing adequate protection to those at risk of violence and assistance to victims, and establishing support services for victims. The State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with victims, as well as for the public at large.

Trafficking in persons

20. The Committee notes the significant efforts undertaken by the State party to combat trafficking in persons, including the adoption of the 2010 amendment to article 444 of the Criminal Code specifically criminalizing trafficking, as well as the strategy to combat trafficking for the period 2012–2018. However, the Committee remains concerned at the very limited number of complaints, prosecutions and convictions in respect of perpetrators of trafficking, as well as at the lack of protection and remedy provided for victims (CAT/C/MNE/2, annex II). (arts. 2, 10 and 16)

The State party should undertake effective measures to prevent and combat trafficking in persons, by implementing in practice article 444 of the Criminal Code, prosecuting perpetrators, providing protection and compensation to victims, and intensifying training for judges, prosecutors, and migration and other law enforcement officials. The State party also should strengthen regional cooperation with a view to combating trafficking.

Corporal punishment

21. While welcoming the commitment made by the State party during the universal periodic review to explicitly prohibit corporal punishment of children in all settings (A/HRC/23/12/Add.1, para. 21), the Committee notes that corporal punishment of children is not explicitly prohibited in the home or in alternative care settings and that corporal punishment is still widely practised in society and accepted as a form of discipline in Montenegro. (art. 16)

The State party should adopt and implement legislation explicitly prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns about the negative impact of corporal punishment on children.

Vulnerable groups

22. While noting the efforts made by the State party, including the adoption of the Law on Prohibition of Discrimination in 2010, and of the Law on Amending the Criminal Code in 2013 which prohibits hate crimes, the Committee remains concerned at discriminatory treatment against ethnic minorities, in particular people of Roma, Ashkali and Egyptian origin, as well as at their deplorable living conditions resulting from such treatment. (art. 16)

The State party should redouble efforts to protect ethnic minorities, in particular people of Roma, Ashkali and Egyptian origin, from discriminatory treatment, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity.

23. While noting the adoption of the Strategy for the Advancement of Quality of Life for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons 2013–2018, and of the Law on Prohibition of Discrimination, which provides for protection against discrimination on the grounds of gender identity and sexual orientation, the Committee remains concerned at

continuing reports of violence and discrimination against the LGBT community, as shown by the allegations of death threats against LGBT activist Zdravko Cimbaljević. (arts. 2 and 16)

The State party should take effective measures to protect the LGBT community from attacks and abuse, inter alia, by ensuring that all acts of violence are promptly, effectively and impartially investigated and prosecuted, that perpetrators are brought to justice and that victims are provided with redress.

Data collection

24. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions regarding cases of torture and ill-treatment by law enforcement and prison personnel, on inter-prisoner violence, as well as on gender-based violence, domestic violence and trafficking.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions regarding the above-mentioned cases of torture and ill-treatment, on inter-prisoner violence, and on gender-based violence, domestic violence and trafficking, as well as on the means of redress, including compensation and rehabilitation, provided to the victims. Such data should be submitted to the Committee when compiled.

Other issues

25. The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, and its efforts for the implementation of their recommendations. The State party should take further steps to ensure a well-coordinated, transparent and publicly accessible approach to overseeing implementation of its obligations under the United Nations human rights mechanisms, including the Convention.

26. The Committee invites the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

27. The State party is encouraged to disseminate widely the report that it submitted to the Committee, its replies to the list of issues, the summary records of meetings, and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to (a) ensuring or strengthening legal safeguards for detained persons; (b) conducting prompt, impartial and effective investigations and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, in accordance with paragraphs 7, 13 and 14 of the present concluding observations.

29. The State party is invited to submit its next report, which will be the third periodic report, by 23 May 2018. To that end, the Committee will, in due course, submit to the State party a list of issues prior to reporting, in view of the fact that the State party has accepted to report to the Committee under the optional reporting procedure.